

INSURANCE CODE

TITLE 4. REGULATION OF SOLVENCY

SUBTITLE F. REINSURANCE

CHAPTER 493. AUTHORIZED REINSURANCE; CREDIT AND ACCOUNTING

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 493.001. DEFINITIONS. In this chapter:

(1) "Assuming insurer" means an insurer that, under a reinsurance contract, incurs an obligation to a ceding insurer, the performance of which is contingent on the ceding insurer incurring liability or loss under the ceding insurer's insurance contract with a third person.

(2) "Qualified United States financial institution" means an institution that:

(A) is organized or, in the case of a United States branch or agency office of a foreign banking organization, licensed, under the laws of the United States or any state of the United States; and

(B) is regulated, supervised, and examined by a federal or state authority that has regulatory authority over banks and trust companies.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 493.002. APPLICABILITY OF CHAPTER. (a) Except as provided by Subsection (a-1), this chapter applies to all insurers, including:

- (1) a stock or mutual property and casualty insurance company;
- (2) a Mexican casualty insurance company;
- (3) a Lloyd's plan;
- (4) a reciprocal or interinsurance exchange;
- (5) a nonprofit legal service corporation;
- (6) a county mutual insurance company;
- (7) a farm mutual insurance company;
- (8) a risk retention group;

(9) any insurer writing a line of insurance regulated by Title 10;

(10) all life, health, and accident insurance companies regulated by the department, including:

(A) a stock or mutual life, health, or accident insurance company;

(B) a fraternal benefit society; and

(C) a nonprofit hospital, medical, or dental service corporation, including a group hospital service corporation operating under Chapter 842; and

(11) a health maintenance organization operating under Chapter 843.

(a-1) A county mutual insurance company operating under Section 912.056(d) that does not directly or indirectly write or assume insurance in any manner in another state may not be allowed credit under Section 493.1033 for reinsurance ceded to a reinsurer qualifying under Sections 493.1033 and 493.1034 and is not subject to Section 493.1039. This subsection does not prohibit a county mutual insurance company described by this subsection from ceding reinsurance to reinsurers qualifying under Sections 493.1033 and 493.1034 under other provisions of this chapter.

(b) Repealed by Acts 2017, 85th Leg., R.S., Ch. 594 (S.B. 1070), Sec. 2.12(2), eff. September 1, 2017.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 594 (S.B. 1070), Sec. 2.02, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 594 (S.B. 1070), Sec. 2.12(2), eff. September 1, 2017.

Sec. 493.003. RULES. The commissioner may adopt necessary and reasonable rules under this chapter to protect the public interest.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

SUBCHAPTER B. REINSURANCE

Sec. 493.051. REINSURANCE AUTHORIZED. (a) An insurer authorized to engage in the business of insurance in this state may reinsure, in any solvent assuming insurer, any risk or part of a risk that both insurers are authorized by law to assume.

(b) An insurer authorized to engage in business in this state may provide reinsurance under this chapter on any line of insurance in which the insurer is authorized to engage in this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 594 (S.B. 1070), Sec. 2.03, eff. September 1, 2017.

Sec. 493.052. LIMITATION ON REINSURANCE OF ENTIRE OUTSTANDING BUSINESS. (a) An insurer may not reinsure the insurer's entire outstanding business in an assuming insurer unless the assuming insurer is authorized to engage in the business of insurance in this state.

(b) Before the date of reinsurance:

(1) the reinsurance contract must be submitted to the commissioner; and

(2) the commissioner must approve the contract as fully protecting the interests of all policyholders.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 493.053. FILING OF REINSURANCE SCHEDULES. The commissioner shall require each insurer to file reinsurance schedules:

(1) when the insurer makes the insurer's annual report; and

(2) at other times as the commissioner directs.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 493.054. ACCOUNTING FOR REINSURANCE CONTRACTS. (a) An insurer shall account for reinsurance contracts and shall record the contracts in the insurer's financial statements in a manner that accurately reflects the effect of the contracts on the insurer's financial condition.

(b) A reinsurance contract may contain a provision allowing the offset of mutual debts and credits between the ceding insurer and the assuming insurer, whether arising out of one or more reinsurance contracts.

(c) The commissioner may adopt reasonable rules relating to:

(1) the accounting and financial statement requirements of this section and the treatment of reinsurance contracts between insurers, including minimum risk transfer standards, asset debits or credits, reinsurance debits or credits, and reserve debits or credits relating to the transfer of all or any part of an insurer's risks or liabilities by reinsurance contracts; and

(2) any contingencies arising from reinsurance contracts.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 493.055. LIMITATION ON RIGHTS AGAINST REINSURER. A person does not have a right against a reinsurer that is not specifically stated in:

(1) the reinsurance contract; or

(2) a specific agreement between the reinsurer and the person.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

SUBCHAPTER C. CREDIT FOR REINSURANCE

Sec. 493.101. EXCLUSIVE PROCEDURE FOR TAKING CREDIT FOR REINSURANCE. A ceding insurer may take a credit for reinsurance, as

an asset or as a deduction from liability, only as provided by this chapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

The following section was amended by the 87th Legislature. Pending publication of the current statutes, see H.B. 1689, 87th Legislature, Regular Session, for amendments affecting the following section.

Sec. 493.102. CREDIT FOR REINSURANCE GENERALLY. (a) A ceding insurer may be allowed credit for reinsurance ceded, as an asset or as a deduction from liability, only if the reinsurance is ceded to an assuming insurer that:

(1) is authorized to engage in the business of insurance or reinsurance in this state;

(2) is accredited as a reinsurer in this state, as provided by Section 493.103;

(3) subject to Subchapter D, maintains, in a qualified United States financial institution that has been granted the authority to operate with fiduciary powers, a trust fund to pay valid claims of:

(A) the assuming insurer's United States policyholders and ceding insurers; and

(B) the policyholders' and ceding insurers' assigns and successors in interest; or

(4) is certified as a reinsurer in this state under Section 493.1033 and maintains adequate collateral as determined by the commissioner.

(b) Notwithstanding Subsection (a), a ceding insurer may be allowed credit for reinsurance ceded to an assuming insurer that does not meet the requirements of that subsection, but only with respect to the insurance of risks located in a jurisdiction in which the reinsurance is required by the jurisdiction's law, including regulations, to be ceded to an assuming insurer that does not meet the requirements of that subsection.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 594 (S.B. [1070](#)), Sec. 2.04, eff. September 1, 2017.

Sec. 493.103. ACCREDITED REINSURER. For purposes of Section [493.102](#)(a)(2), an insurer is accredited as a reinsurer in this state if the insurer:

- (1) submits to this state's jurisdiction;
- (2) submits to this state's authority to examine the insurer's books and records;
- (3) is domiciled and authorized to engage in the business of insurance or reinsurance in at least one state or, if the insurer is a United States branch of an alien assuming insurer, is entered through and authorized to engage in the business of insurance or reinsurance in at least one state;
- (4) annually files with the department a copy of the annual statement the insurer files with the insurance department of the insurer's state of domicile; and
- (5) maintains a surplus as regards policyholders in an amount of at least \$20 million.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. [2017](#)), Sec. 1, eff. April 1, 2007.

Sec. 493.1033. CREDIT ALLOWED FOR CERTAIN CERTIFIED REINSURERS. (a) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that:

- (1) is certified by the commissioner as a reinsurer in this state; and
- (2) secures its obligations in accordance with the requirements of this section and Sections 493.1034-493.1038.

(b) To be eligible for certification, the assuming insurer must:

- (1) be domiciled and licensed to transact insurance or reinsurance in a jurisdiction listed as qualified on the list published by the commissioner under Section [493.1035](#);
- (2) maintain minimum capital and surplus in an amount required by the commissioner by rule;

(3) maintain a financial strength rating from not fewer than two rating agencies determined to be acceptable in accordance with rules adopted by the commissioner;

(4) agree to submit to the jurisdiction of any court of competent jurisdiction in any state of the United States;

(5) appoint the commissioner as its agent for service of process in this state;

(6) provide security for 100 percent of the assuming insurer's liabilities for reinsurance ceded by United States ceding insurers if the assuming insurer resists enforcement of a final judgment of a court of the United States;

(7) meet application information filing requirements, as established by the commissioner by rule, for the initial application for certification and on an ongoing basis; and

(8) satisfy any other requirements for certification required by the commissioner by rule.

(c) In determining eligibility for certification under Subsection (b), the commissioner may defer to the certification granted and financial strength rating assigned by a National Association of Insurance Commissioners accredited jurisdiction.

(d) Credit for reinsurance under this section applies only to a reinsurance contract entered into or renewed on or after the effective date of the certification of the assuming insurer.

Added by Acts 2017, 85th Leg., R.S., Ch. 594 (S.B. [1070](#)), Sec. 2.05, eff. September 1, 2017.

Sec. 493.1034. CERTAIN ASSOCIATIONS MAY BE CERTIFIED REINSURERS. (a) An association that includes incorporated and individual unincorporated underwriters may be a certified reinsurer under Section [493.1033](#). To be eligible for certification the association must satisfy the requirements of Section [493.1033](#) and this section.

(b) The association must satisfy minimum capital and surplus requirements through the capital and surplus equivalents, net of liabilities, of the association and its members that must include a joint central fund in an amount determined by the commissioner to provide adequate protection that may be applied to

any unsatisfied obligation of the association or any of its members.

(c) The incorporated members of the association may not be engaged in any business other than underwriting and are subject to the same level of regulation and solvency control by the association's domiciliary regulator as are the unincorporated members.

(d) Not later than the 90th day after the date the association's financial statements are due to be filed with the association's domiciliary regulator, the association shall provide to the commissioner:

(1) an annual certification by the association's domiciliary regulator of the solvency of each underwriter member; or

(2) if a certification described by Subdivision (1) is unavailable, financial statements, prepared by independent public accountants, of each underwriter member of the association.

Added by Acts 2017, 85th Leg., R.S., Ch. 594 (S.B. [1070](#)), Sec. 2.05, eff. September 1, 2017.

Sec. 493.1035. QUALIFIED JURISDICTIONS. (a) The commissioner shall develop and publish a list of qualified jurisdictions in one of which an assuming insurer must be licensed and domiciled in order to be considered for certification by the commissioner under Section [493.1033](#) as a certified reinsurer. In developing the list, the commissioner shall consider the list of qualified jurisdictions published through the National Association of Insurance Commissioners committee process.

(b) In order to determine whether a jurisdiction of an assuming insurer located outside of the United States is eligible to be recognized as a qualified jurisdiction under Subsection (a), the commissioner shall evaluate the appropriateness and effectiveness of the reinsurance supervisory system of the jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits, and extent of reciprocal recognition afforded by the jurisdiction to reinsurers licensed and domiciled in the United States.

(c) In order to be qualified a jurisdiction must agree in writing to share information and cooperate with the commissioner with respect to all certified reinsurers doing business in the jurisdiction.

(d) A jurisdiction may not be recognized as a qualified jurisdiction if the commissioner has determined that the jurisdiction does not adequately and promptly enforce final United States judgments and arbitration awards. Additional factors may be considered in the discretion of the commissioner.

(e) If the commissioner approves under this section a jurisdiction as qualified that does not appear on the list of qualified jurisdictions published through the National Association of Insurance Commissioners committee process, the commissioner shall provide documentation in accordance with rules adopted by the commissioner. The rules must include a requirement for a thoroughly documented justification of the approval.

(f) The commissioner shall include as a qualified jurisdiction under this section a United States jurisdiction that meets the requirements for accreditation under the National Association of Insurance Commissioners financial regulation standards and accreditation program.

(g) If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction, the commissioner may suspend the reinsurer's certification indefinitely, instead of revoking the certification.

Added by Acts 2017, 85th Leg., R.S., Ch. 594 (S.B. [1070](#)), Sec. 2.05, eff. September 1, 2017.

Sec. 493.1036. REQUIREMENTS FOR CERTIFIED REINSURER.

(a) The commissioner shall assign a rating to each certified reinsurer after giving due consideration to the financial strength ratings assigned by rating agencies recognized by the commissioner by rule.

(b) The commissioner shall publish a list of the ratings assigned under this section for all certified reinsurers.

(c) A certified reinsurer shall secure obligations assumed from ceding insurers domiciled in the United States in accordance

with the rating assigned by the commissioner under Subsection (a) and with the amount of security required by the commissioner by rule.

(d) For a domestic ceding insurer to qualify for full financial statement credit for reinsurance ceded to a certified reinsurer, the certified reinsurer must maintain security:

(1) in a form acceptable to the commissioner and consistent with the insurance laws of this state; or

(2) in a multibeneficiary trust in accordance with Subchapter D, except as otherwise provided.

(e) If a certified reinsurer maintains a trust under Subchapter D to secure its obligations, and chooses to secure its obligations incurred as a certified reinsurer with a multibeneficiary trust, the certified reinsurer shall maintain separate trust accounts for the obligations incurred under reinsurance agreements the certified reinsurer issued or renewed with reduced security as permitted by this section or comparable laws of other United States jurisdictions and for its obligations subject to Subchapter D. It is a condition to the grant of certification under Section [493.1033](#) that the certified reinsurer has bound itself, by the language of the trust agreement and agreement with the insurance commissioner or other chief insurance regulatory official with principal regulatory oversight over each trust account, to fund, on termination of the trust account, out of the remaining surplus of the trust any deficiency of any other trust account described by this subsection.

(f) The minimum trustee surplus requirements provided in Subchapter D do not apply to a multibeneficiary trust described by this section, except that the trust shall maintain a minimum trustee surplus of \$10 million.

(g) With respect to obligations incurred by a certified reinsurer under this section, if the security is insufficient, the commissioner:

(1) shall reduce the allowable credit by an amount proportionate to the deficiency; and

(2) may impose further reductions in allowable credit on finding that there is a material risk that the certified

reinsurer's obligations will not be paid in full when due.

(h) For purposes of this section, a reinsurer whose certification has been revoked, suspended, or voluntarily surrendered or whose certification status has become inactive for any reason shall be treated as a reinsurer required to secure 100 percent of its obligations, except that if the commissioner continues to assign to the reinsurer a higher financial strength rating as permitted by this section, the security requirement does not apply to a reinsurer whose certification has been suspended or whose certification status has become inactive.

Added by Acts 2017, 85th Leg., R.S., Ch. 594 (S.B. [1070](#)), Sec. 2.05, eff. September 1, 2017.

Sec. 493.1037. CERTIFICATION BY NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS. If an applicant for certification has been certified as a reinsurer in a National Association of Insurance Commissioners accredited jurisdiction:

(1) the commissioner may make a determination to defer to the accredited jurisdiction's certification and the financial strength rating assigned by that jurisdiction; and

(2) if the commissioner makes the determination authorized by Subdivision (1), the applicant shall be considered to be a certified reinsurer in this state.

Added by Acts 2017, 85th Leg., R.S., Ch. 594 (S.B. [1070](#)), Sec. 2.05, eff. September 1, 2017.

Sec. 493.1038. SUSPENSION OR REVOCATION OF ACCREDITATION OR CERTIFICATION; INACTIVE STATUS. (a) A certified reinsurer that ceases to assume new business in this state may request to maintain its certification in inactive status to continue to qualify for a reduction in security for in-force business. An inactive certified reinsurer shall continue to comply with all applicable requirements of this section, and the commissioner shall assign a financial strength rating that takes into account, if relevant, the reasons the reinsurer is not assuming new business.

(b) If an accredited or certified reinsurer ceases to meet the requirements for accreditation or certification, the

commissioner may, after notice and opportunity for hearing, suspend or revoke the reinsurer's accreditation or certification. A suspension or revocation may not take effect until after the date of the commissioner's order on the hearing, unless:

(1) the reinsurer waives its right to hearing;

(2) the commissioner's order is based on regulatory action by the reinsurer's domiciliary jurisdiction or the voluntary surrender or termination of the reinsurer's eligibility to transact insurance or reinsurance business in its domiciliary jurisdiction or in the primary certifying state of the reinsurer under this section; or

(3) the commissioner finds that an emergency requires immediate action and a court of competent jurisdiction has not stayed the commissioner's action.

(c) While a reinsurer's accreditation or certification is suspended, a reinsurance contract issued or renewed after the effective date of the suspension does not qualify for credit except to the extent that the reinsurer's obligations under the contract are secured in accordance with Subchapter D.

(d) If a reinsurer's accreditation or certification is revoked, credit for reinsurance may not be granted after the effective date of the revocation except to the extent that the reinsurer's obligations under the contract are secured in accordance with Section [493.1036](#) or Subchapter D.

Added by Acts 2017, 85th Leg., R.S., Ch. 594 (S.B. [1070](#)), Sec. 2.05, eff. September 1, 2017.

Sec. 493.1039. CONCENTRATION RISK. (a) A ceding insurer shall manage its reinsurance recoverable proportionate to its book of business. A domestic ceding insurer shall notify the commissioner not later than the 30th day after the date reinsurance recoverable from any single assuming insurer, or group of affiliated assuming insurers, exceeds or is likely to exceed 50 percent of the domestic ceding insurer's last reported surplus to policyholders. The notification shall demonstrate that the exposure is safely managed by the domestic ceding insurer.

(b) A ceding insurer shall diversify its reinsurance

program. A domestic ceding insurer shall notify the commissioner not later than the 30th day after the date the insurer cedes to any single assuming insurer, or group of affiliated assuming insurers, an amount that exceeds or is likely to exceed 20 percent of the ceding insurer's gross written premium in the prior calendar year. The notification shall demonstrate that the exposure is safely managed by the domestic ceding insurer.

Added by Acts 2017, 85th Leg., R.S., Ch. 594 (S.B. [1070](#)), Sec. 2.05, eff. September 1, 2017.

Sec. 493.104. CREDIT FOR FUNDS SECURING REINSURANCE OBLIGATIONS. (a) Subject to Subsection (b), any asset or deduction from liability for reinsurance ceded to an assuming insurer that does not meet the requirements of Section [493.102](#) shall be allowed in an amount that does not exceed the liabilities carried by the ceding insurer and in the amount of funds held by or on behalf of the ceding insurer under a reinsurance contract with the assuming insurer, including funds held in trust for the ceding insurer, as security for the payment of obligations under the contract.

(b) The funds held as security:

(1) must be held in the United States subject to withdrawal solely by and under the exclusive control of the ceding insurer or, in the case of a trust, held in a qualified United States financial institution that has been granted the authority to operate with fiduciary powers; and

(2) may be in the form of:

(A) cash;

(B) securities that are listed by the Securities Valuation Office of the National Association of Insurance Commissioners and qualify as admitted assets;

(C) subject to Section [493.105](#), a clean, irrevocable, unconditional letter of credit, issued or confirmed by a qualified United States financial institution that has been determined by the commissioner or the Securities Valuation Office of the National Association of Insurance Commissioners to meet the standards of financial condition and standing that are considered necessary and appropriate to regulate the quality of financial

institutions whose letters of credit will be acceptable to the commissioner; or

(D) another form of security acceptable to the commissioner.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 79 (S.B. 1093), Sec. 2, eff. September 1, 2015.

Sec. 493.105. ACCEPTABILITY OF CERTAIN LETTERS OF CREDIT. A letter of credit issued or confirmed by an institution that meets the standards prescribed by Section 493.104(b)(2)(C) as of the date the letter is issued or confirmed, but later fails to meet those standards, continues to be acceptable as security under Section 493.104 until the earliest of:

(1) the letter's expiration;

(2) the letter's extension, renewal, modification, or amendment after the date the institution fails to meet those standards; or

(3) the expiration of the three-month period after the date the institution fails to meet those standards.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 493.106. CREDIT FOR REINSURANCE: DIRECT PAYMENT ON LIABILITY REQUIRED. (a) A ceding insurer may not be given credit for reinsurance ceded, as an asset or as a deduction from liability, in an accounting or financial statement unless the reinsurance is payable by the assuming insurer:

(1) on the liability of the ceding insurer under the contracts reinsured, without diminution because of the ceding insurer's insolvency; and

(2) directly to the ceding insurer or to the ceding insurer's domiciliary liquidator or receiver.

(b) Subsection (a)(2) does not apply if:

(1) the reinsurance contract specifically provides

that, if the ceding insurer is insolvent, the reinsurance is payable to a payee other than one described by Subsection (a)(2); or

(2) the assuming insurer, with the direct insured's consent, has assumed the ceding insurer's policy obligations to the payee as the assuming insurer's direct obligations to the payee under the policy as a substitute for the ceding insurer's obligations.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 493.107. REQUEST FOR INFORMATION FROM ASSUMING INSURER. (a) The commissioner may request that an assuming insurer not meeting the requirements of Section 493.102 file:

(1) financial statements certified and audited by an independent certified public accountant;

(2) a certified copy of the certificate or letter of authority from the domiciliary jurisdiction; and

(3) information on the principals and management of the assuming insurer.

(b) If an assuming insurer does not comply with a request under this section, the commissioner may issue a directive prohibiting all authorized insurers from taking credit for business ceded to the assuming insurer after the effective date of the directive.

(c) An unauthorized insurer that is included in the most recent quarterly listing published by the International Insurers Department of the National Association of Insurance Commissioners is considered to have complied with a request under this section.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

SUBCHAPTER D. REQUIREMENTS FOR TRUST CREDIT ALLOWANCE

Sec. 493.151. APPLICABILITY OF SUBCHAPTER. This subchapter applies to:

(1) a trust that is used to qualify for a reinsurance credit under Section 493.102(a)(3) and as described by Sections

[493.1036](#)(e) and (f); and

(2) the assuming insurer that maintains the trust fund.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. [2017](#)), Sec. 1, eff. April 1, 2007.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 594 (S.B. [1070](#)), Sec. 2.06, eff. September 1, 2017.

Sec. 493.152. COMPOSITION OF TRUST. (a) If the assuming insurer is a single insurer, the trust must:

(1) consist of a trustee account representing the assuming insurer's liabilities attributable to business written in the United States; and

(2) include a trustee surplus of at least \$20 million, except after the assuming insurer has permanently discontinued underwriting new business secured by the trust for not less than three calendar years, the insurance commissioner or other chief insurance regulatory official with principal regulatory oversight over the trust may authorize a reduction in the required trustee surplus, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of United States ceding insurers, policyholders, and claimants in light of reasonably foreseeable adverse loss development.

(a-1) The risk assessment described by Subsection (a)(2) may involve an actuarial review, including an independent analysis of reserves and cash flows, and must consider all material risk factors, including when applicable, the lines of business involved, the stability of the incurred loss estimates, and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. The minimum required trustee surplus may not be reduced to an amount less than 30 percent of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers.

(b) If the assuming insurer is a group of insurers that includes an unincorporated individual insurer:

(1) the trust must:

(A) consist of a trustee account representing the group's liabilities attributable to business written in the United States; and

(B) include a trustee surplus of at least \$100 million; and

(2) the group shall make available to the department an annual certification by the group's domiciliary regulator and its independent public accountants of each underwriter's solvency.

(c) If the assuming insurer is a group of incorporated insurers under common administration that has continuously engaged in the business of insurance for at least three years, is under the supervision of the Department of Trade and Industry of the United Kingdom, and has an aggregate policyholders' surplus of \$10 billion:

(1) the trust must:

(A) consist of a trustee account representing the group's several liabilities attributable to business written in the United States under reinsurance contracts issued in the name of the group; and

(B) include a trustee surplus of not less than \$100 million held jointly for the benefit of United States insurers that have ceded business to any member of the group; and

(2) each member of the group shall make available to the department an annual certification by the member's domiciliary regulator and its independent public accountants of each member's solvency.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 594 (S.B. 1070), Sec. 2.07, eff. September 1, 2017.

Sec. 493.153. FORM OF TRUST. (a) The trust must be established in a form approved by the commissioner or an insurance commissioner or other chief insurance regulatory official of another state who, under the trust instrument, has principal

regulatory oversight over the trust.

(b) A copy of the trust instrument and any amendment to the trust instrument must be filed with the insurance commissioner or other chief insurance regulatory official of each state in which the ceding insurer beneficiaries of the trust are domiciled.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. [2017](#)), Sec. 1, eff. April 1, 2007.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 594 (S.B. [1070](#)), Sec. 2.08, eff. September 1, 2017.

Sec. 493.154. TERMS OF TRUST. (a) The trust instrument must provide that contested claims are valid and enforceable on the final order of any court in the United States.

(b) The trust must vest legal title to the trust's assets in the trustees of the trust for:

(1) the trust's United States policyholders and ceding insurers; and

(2) the policyholders' and ceding insurers' assigns and successors in interest.

(c) The trust must remain in effect as long as the assuming insurer has outstanding obligations under a reinsurance contract subject to the trust.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. [2017](#)), Sec. 1, eff. April 1, 2007.

Sec. 493.155. REPORTS AND CERTIFICATION. (a) Not later than February 28 of each year, the trustees of the trust shall:

(1) report to the department in writing, showing the balance of the trust and listing the trust's investments at the end of the preceding year; and

(2) certify the date of termination of the trust, if termination is planned, or certify that the trust will not expire before December 31 of the year of the report.

(b) To enable the commissioner to determine the sufficiency of the trust fund under Section [493.102](#)(a)(3) and for purposes of Sections [493.1036](#)(e) and (f), the assuming insurer shall report to

the department not later than March 1 of each year information substantially the same as the information required to be reported by an authorized insurer on the National Association of Insurance Commissioners' Annual Statement form.

(c) Not later than February 28 of each year, if requested by a beneficiary of the trust fund, an assuming insurer that maintains a trust fund shall provide or make available to the assuming insurer's United States ceding insurers or those ceding insurers' assigns and successors in interest the following information:

(1) a copy of the trust instrument and any amendments to the trust instrument relating to the trust fund;

(2) a copy of the assuming insurer's annual and quarterly financial information, and the insurer's most recent audited financial statement provided to the commissioner, including any exhibits and schedules;

(3) any financial information provided to the department or commissioner by the assuming insurer, including any exhibits and schedules;

(4) a copy of any annual and quarterly financial information provided to the department or commissioner by the trustee of the trust fund maintained by the assuming insurer, including any exhibits and schedules; and

(5) a copy of the information required to be reported by the trustee under Subsection (a).

(d) If requested by a ceding insurer, the assuming insurer shall provide, in addition to the information under Subsection (c), a certification that:

(1) discloses the financial information provided to the commissioner relating to reinsurance liabilities attributable to the ceding insurer; and

(2) certifies that the amount of security held in trust on behalf of the ceding insurer is at least equal to those amounts as reflected in the report to the department under Subsection (a).

(e) The assuming insurer shall also provide, if requested by the ceding insurer, a certification that the trust, in aggregate:

(1) consists of sufficient assets to support the

assuming insurer's trust obligations under applicable state laws and regulations; and

(2) includes a trusteed surplus of at least \$20 million.

(f) An assuming insurer may decline to release trade secrets or commercially sensitive information to a ceding insurer.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 594 (S.B. 1070), Sec. 2.09, eff. September 1, 2017.

Sec. 493.156. CERTAIN TRUSTEED ASSUMING INSURERS: REQUIREMENTS FOR REINSURANCE CONTRACT. (a) A ceding insurer may not be allowed credit under Section 493.102(a)(3) for reinsurance ceded to an assuming insurer that is not authorized, accredited, or certified to engage in the business of insurance or reinsurance in this state unless the assuming insurer agrees in the reinsurance contract:

(1) that, if the assuming insurer fails to perform the assuming insurer's obligations under the reinsurance contract, the assuming insurer, at the request of the ceding insurer, will:

(A) submit to the jurisdiction of a court in any state of the United States;

(B) comply with all requirements necessary to give the court jurisdiction; and

(C) abide by the final decision of that court or, if the court's decision is appealed, of the appellate court; and

(2) to designate the commissioner or an attorney as an agent for service of process in any action, suit, or proceeding instituted by or on behalf of the ceding insurer.

(b) This section is not intended to conflict with or override a provision in a reinsurance contract that requires the parties to arbitrate the parties' disputes.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 594 (S.B. 1070), Sec. 2.10, eff. September 1, 2017.

Sec. 493.1561. CERTAIN TRUSTEED ASSUMING REINSURERS; REQUIREMENTS FOR TRUST AGREEMENT. (a) In this section, "commissioner" means the insurance commissioner or other chief insurance regulatory official with principal regulatory oversight over the trust.

(b) If the assuming insurer does not meet the requirements of Section 493.102(a)(1) or (2), the credit permitted by Section 493.102(a)(3) or (4) may not be allowed unless the assuming insurer agrees in the trust agreement that:

(1) notwithstanding any other provisions in the trust agreement, the trustee shall comply with an order of the commissioner or a court ordering the trustee to transfer to the commissioner all assets of the trust fund if:

(A) the trust fund is inadequate because the trust fund contains an amount that is less than the amount required by this subchapter; or

(B) the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, or liquidation or a similar proceeding under the laws of the grantor's domiciliary state or country;

(2) claims in a proceeding described by Subdivision (1)(B) must be filed with the commissioner;

(3) the commissioner shall value the claims described by Subdivision (2) and distribute the assets of the trust under the laws of the trust's domiciliary state applicable to the liquidation of a domestic insurance company;

(4) if the commissioner determines that all or part of the trust assets are unnecessary to satisfy the claims of the grantor's ceding insurers domiciled in the United States, the commissioner shall return those unnecessary assets to the trustee for distribution in accordance with the trust agreement; and

(5) the grantor waives any right available under federal or state law that is inconsistent with this section.

Added by Acts 2017, 85th Leg., R.S., Ch. 594 (S.B. 1070), Sec. 2.11,

eff. September 1, 2017.

Sec. 493.157. EXAMINATION OF TRUST AND ASSUMING INSURER.
The trust and the assuming insurer are subject to examination as
determined by the commissioner.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. [2017](#)), Sec. 1, eff.
April 1, 2007.